

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Notice of Proposed Rulemaking
CS Docket No. 02-52
Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities

REPLY COMMENTS OF THE CITY OF BURLESON, TEXAS

These comments are filed by the City of Burleson, Texas in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, the City of Burleson believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate the cable companies in their provision on non-cable services, as provided under the Cable Act.

I. Our community and the status of cable modem service.

The City of Burleson is a city of 25,575 population. It is served by both Charter Communications and Pathway Com-Tel, Inc. Combined, these companies serve approximately 3,000 subscribers. Both companies do offer cable modem service.

II. Our franchise and cable modem service.

Our franchise agreement was issued in 1996 as an agreement with Marcus Cable. In 1998, Charter Communications purchased Marcus and responsibility for the Franchise Agreement with the City of Burleson was transferred to Charter via Ordinance C-510. This agreement contains very specific language relating to the provision of cable modem services in section 12, as quoted below

12. Cable Modem, High-Speed Data and Internet Services. The Federal Telecommunications Act of 1996 modified the definition of "cable services" in the Federal Cable Act (Title VI of the Communications Act of 1934, 47, USC Section 115 and following). The change addresses cable companies' ability to provide Enhanced, Advanced Cable Services over a Cable System as a cable service (and not as a telephone service, with accompanying telephone regulation). The Franchise predates and does not reflect this legislative change. Company intends to provide Enhanced, Advanced Cable Services where economically feasible.

12.1 To remove an uncertainty on Company's authority to provide Enhance, Advanced Cable Services the parties agree that Company has the authority to provide Enhanced, Advanced Cable Services under the franchise and that the revenues therefrom

shall be included in gross revenues for the purposes of computing and paying cable franchise fees.

When Charter Communications assumed service provision in Burleson, the transfer agreement included the company's acceptance of the following provision:

Charter, MCP, CC Holdings and Vulcan accept and agree to be bound by the terms and conditions of the City Charter, the Franchise and all ordinances applicable to Company's operations after the transfer. Charter, MCP, CC Holdings, Vulcan and Company do not contend that any provision of the Franchise is unlawful or unenforceable, nor are they aware of any ordinance or any provision in the City Charter which they contend is unlawful or unenforceable. The City acknowledges that the Franchise is in full force and effect.

Pursuant to these provisions, the City is entitled to receive franchise fees on cable modem service. We have received such fees in the past and these payments were made in consideration of the grant of the franchise. Our franchise was written to permit the operator to provide both cable services and other services, so long as the operator complied with the franchise terms.

III. Our Community and broadband development.

Our community believes it is important to encourage broadband development, and to encourage development of broadband applications. We also believe that in order to achieve the promise of broadband, it must be available to the entire community, so far as is possible. We want to avoid gaps in knowledge and opportunity because of inequalities in the availability of broadband throughout the community.

To that end, our community devotes significant resources to take advantage of the information highway and to extend its benefits to all. Our public library has numerous public computer terminals with Internet access and offers courses to teach people how to access and utilize the resources available via the Internet. The funds we obtain from the cable modem franchise fees can help support these and other activities. If we lose these funds, it will be more difficult to protect consumers and to promote broadband development and use in this community.

Respectfully submitted on this 16th day of July, 2002,

Sheri Campbell-Husband

Sheri Campbell-Husband
Asst. to the City Manager/Marketing & Comm. Coordinator
City of Burleson
141 W. Renfro, Burleson, TX 76028
817-447-5400 ext 286